

Donald E. Reid

From: Greg Lanier [tglanier@JonesDay.com]
Sent: Thursday, March 02, 2006 4:43 PM
To: Reiner, Kevin
Cc: Donald E. Reid; Tellekson, David; Hykal, George E.; Jane L Froyd; kradamo@jonesday.com; Gezgin, Nilly; Csepes, Peter; rbissell@ycst.com; Sullivan, Robert
Subject: RE: Ongoing Privilege/Discovery Issues

Thank you for the prompt response and for confirming that Novozymes does not intend to produce any additional documents or expert reports. Neither do Genencor and EDC.

We understand you do not accept our proposal. We will ask the Court to resolve the issue. Because new documents have been produced even after our letter yesterday, our requested relief will evolve as well.

Finally, we note that while Novozymes has made available all the deponents it requested, it has consistently produced documents relevant to those depositions after the depositions occurred (with the potential exception of the Borchert deposition today).

Greg

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"Hykal, George E." <ghykal@darbylaw.com>, "Jane L Froyd" <jfroyd@JonesDay.com>,
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Robert" <rsullivan@Darbylaw.com>
Subject
RE: Ongoing Privilege/Discovery
Issues

Greg,

Novozymes does not intend to produce any more expert reports or documents. Does Genencor?

Novozymes does not agree with your proposal for the parties to forego reliance on documents produced after the pre-trial conference. Further, Novozymes has provided for deposition every witness Genencor requested.

Kevin L. Reiner
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-----Original Message-----

From: Greg Lanier [mailto:tglanier@JonesDay.com]
Sent: Thursday, March 02, 2006 4:00 PM
To: Reiner, Kevin; rbissell@ycst.com
Cc: dreid@mnat.com; Tellekson, David; Hykal, George E.; Jane L Froyd; kradamo@jonesday.com; Reiner, Kevin; Gezgin, Nilly; Csepes, Peter;

Sullivan, Robert
Subject: Ongoing Privilege/Discovery Issues
Importance: High

Events have conspired to give us one last opportunity to attempt to resolve these issues, and that is the purpose of this email.

To start with, we request, again, that you answer the questions in my email below. We assume there is no reason you can't, or won't, tell us whether Novozymes is done producing documents and submitting new expert reports, and look forward to your response at your earliest convenience. We will continue to object to newly produced documents and substantive changes to expert opinions (eg, Dr. Arnold's changes in position from the "informal" analysis to the second rebuttal report to her deposition).

Assuming that the new productions and reports are done, then the issue is how to deal with the documents and opinions provided after the pretrial conference, often after the depositions of the Novozymes personnel or expert at issue. We propose that the parties be foreclosed from relying on documents or reports they provided after the pretrial conference. Thus, the Klibanov supplemental report would be moot and withdrawn because the Arnold supplemental report and analysis to which it responds would be withdrawn; similarly, if a party produced a document after the discovery cut-off, then that party may not offer that document at trial (though the non-producing party would not be so limited).

If Novozymes agrees to that, defendants would withdraw their renewed motion in limine. To anticipate one objection, the fact that the Court ordered expedited discovery does not affect our proposal. The Court expressly ordered that Novozymes provide expedited discovery quickly and permit defendants to take depositions based on those new documents. That is not what happened here.

Please let us know your position this afternoon.

Greg

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Greg

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AM

cc

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Subject

Re: NZ v GCOR -- Updated Exhibit

List(Document link: Greg Lanier)

George, thank you for providing the updated exhibit list. We'll provide any comments, including objections to the new exhibits, later today.

In the mean time, we ask that Novozymes answer the following questions: (1) does Novozymes intend to produce any additional documents (and, if so, when?); and (2) does Novozymes intend to provide any additional expert report(s) (and, if so, when)? By asking, we don't, of course, agree that Novozymes may properly do so or that its productions to date have been proper. We ask because we need to know to prepare for trial. Your answers, equivocal or otherwise, will be an issue on our call with the Court today. Therefore, we need those answers soon.

Greg

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